

# Senate Study Bill 1117 - Introduced

SENATE FILE \_\_\_\_\_

BY (PROPOSED COMMITTEE ON  
HEALTH AND HUMAN SERVICES  
BILL BY CHAIRPERSON EDLER)

## A BILL FOR

1 An Act relating to the certificate of need process.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 135.61, subsections 1, 14, 15, and 18,  
2 Code 2023, are amended to read as follows:

3 1. "*Affected persons*" means, with respect to an application  
4 for a certificate of need:

5 a. The person submitting the application.

6 b. Consumers who would be served by the new institutional  
7 health service proposed in the application.

8 c. Each institutional health facility or health maintenance  
9 organization which is located in the geographic area which  
10 would appropriately be served by the new institutional  
11 health service proposed in the application. The appropriate  
12 geographic service area of each institutional health facility  
13 or health maintenance organization shall be determined on a  
14 uniform basis in accordance with criteria established in rules  
15 adopted by the department.

16 ~~d. Each institutional health facility or health maintenance~~  
17 ~~organization which, prior to receipt of the application by~~  
18 ~~the department, has formally indicated to the department~~  
19 ~~pursuant to [this subchapter](#) an intent to furnish in the future~~  
20 ~~institutional health services similar to the new institutional~~  
21 ~~health service proposed in the application.~~

22 ~~e. Any other person designated as an affected person by~~  
23 ~~rules of the department.~~

24 ~~f. Any payer or third-party payer for health services.~~

25 14. "*Institutional health facility*" means any of the  
26 following, without regard to whether the facilities referred  
27 to are publicly or privately owned or are organized for profit  
28 or not or whether the facilities are part of or sponsored by a  
29 health maintenance organization:

30 a. A hospital.

31 b. A health care facility.

32 c. An organized outpatient health facility.

33 d. An outpatient surgical facility.

34 ~~e. A community mental health facility.~~

35 ~~f. A birth center.~~

1     15. "*Institutional health service*" means any health service  
2 furnished in or through institutional health facilities or  
3 health maintenance organizations, ~~including mobile health~~  
4 ~~services.~~

5     18. "*New institutional health service*" or "*changed*  
6 *institutional health service*" means any of the following:

7     a. The construction, development, or other establishment of  
8 a new institutional health facility regardless of ownership.

9     b. Relocation of an institutional health facility.

10    c. Any capital expenditure, lease, or donation by or  
11 on behalf of an institutional health facility in excess  
12 of ~~one~~ five million ~~five hundred thousand~~ dollars within a  
13 twelve-month period.

14    d. A permanent change in the bed capacity, as determined  
15 by the department, of an institutional health facility. For  
16 purposes of this paragraph, a change is permanent if it is  
17 intended to be effective for one year or more.

18    ~~e. Any expenditure in excess of five hundred thousand~~  
19 ~~dollars by or on behalf of an institutional health facility for~~  
20 ~~health services which are or will be offered in or through an~~  
21 ~~institutional health facility at a specific time but which were~~  
22 ~~not offered on a regular basis in or through that institutional~~  
23 ~~health facility within the twelve-month period prior to that~~  
24 ~~time.~~

25    ~~f. The deletion of one or more health services, previously~~  
26 ~~offered on a regular basis by an institutional health facility~~  
27 ~~or health maintenance organization or the relocation of one or~~  
28 ~~more health services from one physical facility to another.~~

29    ~~g. Any acquisition by or on behalf of a health care provider~~  
30 ~~or a group of health care providers of any piece of replacement~~  
31 ~~equipment with a value in excess of one million five hundred~~  
32 ~~thousand dollars, whether acquired by purchase, lease, or~~  
33 ~~donation.~~

34    ~~h. Any acquisition by or on behalf of a health care provider~~  
35 ~~or group of health care providers of any piece of equipment~~

1 ~~with a value in excess of one million five hundred thousand~~  
2 ~~dollars, whether acquired by purchase, lease, or donation,~~  
3 ~~which results in the offering or development of a health~~  
4 ~~service not previously provided. A mobile service provided~~  
5 ~~on a contract basis is not considered to have been previously~~  
6 ~~provided by a health care provider or group of health care~~  
7 ~~providers.~~

8 ~~i. Any acquisition by or on behalf of an institutional~~  
9 ~~health facility or a health maintenance organization of any~~  
10 ~~piece of replacement equipment with a value in excess of one~~  
11 ~~million five hundred thousand dollars, whether acquired by~~  
12 ~~purchase, lease, or donation.~~

13 ~~j. Any acquisition by or on behalf of an institutional~~  
14 ~~health facility or health maintenance organization of any~~  
15 ~~piece of equipment with a value in excess of one million five~~  
16 ~~hundred thousand dollars, whether acquired by purchase, lease,~~  
17 ~~or donation, which results in the offering or development of~~  
18 ~~a health service not previously provided. A mobile service~~  
19 ~~provided on a contract basis is not considered to have been~~  
20 ~~previously provided by an institutional health facility.~~

21 ~~k. Any air transportation service for transportation of~~  
22 ~~patients or medical personnel offered through an institutional~~  
23 ~~health facility at a specific time but which was not offered~~  
24 ~~on a regular basis in or through that institutional health~~  
25 ~~facility within the twelve-month period prior to the specific~~  
26 ~~time.~~

27 ~~l. Any mobile health service with a value in excess of one~~  
28 ~~million five hundred thousand dollars.~~

29 ~~m. Any of the following:~~

30 ~~(1) Cardiac catheterization service.~~

31 ~~(2) Open heart surgical service.~~

32 ~~(3) Organ transplantation service.~~

33 ~~(4) Radiation therapy service applying ionizing radiation~~  
34 ~~for the treatment of malignant disease using megavoltage~~  
35 ~~external beam equipment.~~

1     Sec. 2. Section 135.61, subsections 2 and 16, Code 2023, are  
2 amended by striking the subsections.

3     Sec. 3. Section 135.62, subsection 2, paragraphs a, b, and  
4 c, Code 2023, are amended to read as follows:

5     *a. Qualifications.* The members of the council shall be  
6 chosen so that the council as a whole is broadly representative  
7 of various geographical areas of the state ~~and no more than~~  
8 ~~three of its members are affiliated with the same political~~  
9 ~~party. Each council member shall be a person who has~~  
10 ~~demonstrated by prior activities an informed concern for the~~  
11 ~~planning and delivery of health services.~~ A member of the  
12 council and any spouse of a member shall not, during the  
13 time that member is serving on the council, do either of the  
14 following:

15     (1) Be a health care provider nor be otherwise directly or  
16 indirectly engaged in the delivery of health care services nor  
17 have a material financial interest in the providing or delivery  
18 of health services.

19     (2) Serve as a member of any board or other policymaking  
20 or advisory body of an institutional health facility, a health  
21 maintenance organization, or any health or hospital insurer.

22     *b. Appointments.* Terms of council members shall be ~~six~~  
23 three years, beginning and ending as provided in section  
24 69.19. ~~A member shall be appointed in each odd-numbered~~  
25 ~~year to succeed each member whose term expires in that year.~~  
26 ~~Vacancies shall be filled by the governor for the balance of~~  
27 ~~the unexpired term. Each appointment to the council is subject~~  
28 ~~to confirmation by the senate. A council member is ineligible~~  
29 ~~for appointment to a second consecutive term, unless first~~  
30 ~~appointed to an unexpired term of three years or less.~~

31     *c. Chairperson.* The ~~governor~~ council shall designate one  
32 of the council members as chairperson. That designation may  
33 be changed not later than July 1 of any odd-numbered year,  
34 effective on the date of the organizational meeting held in  
35 that year under paragraph "d".

1     Sec. 4. Section 135.63, subsection 1, Code 2023, is amended  
2 to read as follows:

3     1. A new institutional health service or changed  
4 institutional health service shall not be offered or developed  
5 in this state without prior application to the department  
6 for and receipt of a certificate of need, pursuant to  
7 this subchapter. The application shall be made upon forms  
8 furnished or prescribed by the department and shall contain  
9 such information as the department may require under this  
10 subchapter. The application shall be accompanied by an  
11 economic impact statement that includes information specified  
12 by rule to assist the department and the council in the  
13 evaluation of the application pursuant to section 135.64.  
14 The application shall be accompanied by a fee equivalent to  
15 ~~three-tenths of one percent of the anticipated cost of the~~  
16 ~~project with a minimum fee of six hundred dollars and a maximum~~  
17 ~~fee of twenty-one of one thousand dollars.~~ The fee shall be  
18 remitted by the department to the treasurer of state, who shall  
19 place it in the general fund of the state. If an application  
20 is voluntarily withdrawn within thirty calendar days after  
21 submission, seventy-five percent of the application fee shall  
22 be refunded; ~~if the application is voluntarily withdrawn more~~  
23 ~~than thirty but within sixty days after submission, fifty~~  
24 ~~percent of the application fee shall be refunded; if the~~  
25 ~~application is withdrawn voluntarily more than sixty days~~  
26 ~~after submission, twenty-five percent of the application fee~~  
27 ~~shall be refunded.~~ Notwithstanding the required payment of  
28 an application fee under [this subsection](#), an applicant for a  
29 new institutional health service or a changed institutional  
30 health service offered or developed by an intermediate care  
31 facility for persons with an intellectual disability or an  
32 intermediate care facility for persons with mental illness as  
33 defined pursuant to [section 135C.1](#) is exempt from payment of  
34 the application fee.

35     Sec. 5. Section 135.63, subsection 2, paragraphs a and e,

1 Code 2023, are amended to read as follows:

2     a. Private offices and private clinics of an individual  
3 physician, dentist, or other practitioner or group of  
4 health care providers, except as provided by ~~section 135.61,~~  
5 ~~subsection 18, paragraphs "g", "h", and "m", and section 135.61,~~  
6 subsections 20 and 21.

7     e. A health maintenance organization or combination of  
8 health maintenance organizations or an institutional health  
9 facility controlled directly or indirectly by a health  
10 maintenance organization or combination of health maintenance  
11 organizations, except when the health maintenance organization  
12 or combination of health maintenance organizations ~~does any of~~  
13 ~~the following:~~

14     ~~(1) Constructs~~ constructs, develops, renovates, relocates,  
15 or otherwise establishes an institutional health facility.

16     ~~(2) Acquires major medical equipment as provided by section~~  
17 ~~135.61, subsection 18, paragraphs "i" and "j".~~

18     Sec. 6. Section 135.63, subsection 2, paragraph h, Code  
19 2023, is amended by striking the paragraph.

20     Sec. 7. Section 135.63, subsection 4, unnumbered paragraph  
21 1, Code 2023, is amended to read as follows:

22     ~~A copy of the application shall be sent to the department~~  
23 ~~of human services at the time the application is submitted to~~  
24 ~~the Iowa department of public health.~~ The department shall not  
25 process applications for and the council shall not consider a  
26 new or changed institutional health service for an intermediate  
27 care facility for persons with an intellectual disability  
28 unless both of the following conditions are met:

29     Sec. 8. Section 135.66, subsections 1 and 2, Code 2023, are  
30 amended to read as follows:

31     1. a. Within fifteen business days after receipt of an  
32 application for a certificate of need, the department shall  
33 examine the application for form and completeness and accept  
34 or reject it. An application shall be rejected only if it  
35 fails to provide all information required by the department

1 pursuant to section 135.63, subsection 1. The department shall  
2 promptly return to the applicant any rejected application, with  
3 an explanation of the reasons for its rejection.

4 b. Within thirty days after notifying the applicant of  
5 rejection of the application, the applicant may resubmit a  
6 revised application for review under this subsection and shall  
7 not be subject to payment of another required application  
8 fee pursuant to section 135.63. If a subsequent rejection  
9 is issued, the applicant shall resubmit the application in  
10 accordance with and shall be subject to the procedure and  
11 requirements for an initial application.

12 2. Upon acceptance of an application for a certificate  
13 of need, the department shall promptly ~~undertake to~~ notify  
14 all affected persons in writing that formal review of the  
15 application has been initiated. Notification to those affected  
16 persons who are consumers ~~or third-party payers or other~~  
17 ~~payors for health services~~ may be provided by distribution of  
18 the pertinent information ~~to the news media~~ by an electronic  
19 distribution method available to the department.

20 Sec. 9. Section 135.67, subsection 1, Code 2023, is amended  
21 to read as follows:

22 1. The department may ~~waive the letter of intent procedures~~  
23 ~~prescribed by~~ section 135.65 and substitute conduct a summary  
24 review procedure, which shall be established by rules of the  
25 department, when it accepts an application for a certificate of  
26 need for a project which meets any of the following criteria  
27 ~~in paragraphs "a" through "e":~~

28 a. A project which is limited to repair or replacement of a  
29 facility or equipment damaged or destroyed by a disaster, and  
30 which will not expand the facility nor increase the services  
31 provided beyond the level existing prior to the disaster.

32 b. A project necessary to enable the facility or service to  
33 achieve or maintain compliance with federal, state, or other  
34 appropriate licensing, certification, or safety requirements.

35 c. A project which will not change the existing bed capacity



1 of the applicant's facility or service, as determined by the  
2 department, by more than ten percent or ten beds, whichever is  
3 less, over a two-year period.

4 ~~d. A project the total cost of which will not exceed one~~  
5 ~~hundred fifty thousand dollars.~~

6 ~~e.~~ d. Any other project for which the applicant proposes  
7 and the department agrees to summary review.

8 Sec. 10. Section 135.69, Code 2023, is amended to read as  
9 follows:

10 **135.69 Council to make final decision.**

11 1. The department shall complete its formal review of  
12 the application within ~~ninety~~ thirty days after acceptance  
13 of the application, except as otherwise provided by section  
14 135.72, subsection 4. Upon completion of the formal review,  
15 the council shall approve or deny the application. The council  
16 shall issue written findings stating the basis for its decision  
17 on the application, and the department shall send copies of  
18 the council's decision and the written findings supporting  
19 the decision to the applicant and to any other person who so  
20 requests.

21 2. Failure by the council to issue a written decision on an  
22 application for a certificate of need within the time required  
23 by this section shall constitute ~~denial~~ approval of and final  
24 administrative action on the application.

25 Sec. 11. Section 135.72, subsection 4, Code 2023, is amended  
26 to read as follows:

27 4. Criteria for determining when it is not feasible to  
28 complete formal review of an application for a certificate of  
29 need within the time limits specified in section 135.69. The  
30 rules adopted under this subsection shall include criteria for  
31 determining whether an application proposes introduction of  
32 technologically innovative equipment, and if so, procedures  
33 to be followed in reviewing the application. However, a rule  
34 adopted under this subsection shall not permit a deferral of  
35 more than ~~sixty~~ thirty days beyond the time when a decision is

1 required under [section 135.69](#), unless both the applicant and  
2 the department agree to a longer deferment.

3 Sec. 12. Section 135.73, subsection 1, Code 2023, is amended  
4 to read as follows:

5 1. Any party constructing a new institutional health  
6 facility or an addition to or renovation of an existing  
7 institutional health facility without first obtaining a  
8 certificate of need ~~or, in the case of a mobile health service,~~  
9 ~~ascertaining that the mobile health service has received~~  
10 ~~certificate of need approval,~~ as required by [this subchapter](#),  
11 shall be denied licensure or change of licensure by the  
12 appropriate responsible licensing agency of this state.

13 Sec. 13. Section 135.131, subsection 1, paragraph a, Code  
14 2023, is amended to read as follows:

15 a. *"Birth center"* means ~~birth center as defined in section~~  
16 ~~135.61~~ a facility or institution, which is not an ambulatory  
17 surgical center or a hospital or in a hospital, in which  
18 births are planned to occur following a normal, uncomplicated,  
19 low-risk pregnancy.

20 Sec. 14. Section 135P.1, Code 2023, is amended to read as  
21 follows:

22 **135P.1 Definitions.**

23 For the purposes of [this chapter](#), unless the context  
24 otherwise requires:

25 1. *"Adverse health care incident"* means an objective and  
26 definable outcome arising from or related to patient care that  
27 results in the death or physical injury of a patient.

28 2. *"Health care provider"* means a physician or osteopathic  
29 physician licensed under [chapter 148](#), a physician assistant  
30 licensed and practicing under a supervising physician pursuant  
31 to [chapter 148C](#), a podiatrist licensed under [chapter 149](#), a  
32 chiropractor licensed under [chapter 151](#), a licensed practical  
33 nurse, a registered nurse, or an advanced registered nurse  
34 practitioner licensed under [chapter 152](#) or [152E](#), a dentist  
35 licensed under [chapter 153](#), an optometrist licensed under

1 chapter 154, a pharmacist licensed under chapter 155A, or  
2 any other person who is licensed, certified, or otherwise  
3 authorized or permitted by the law of this state to administer  
4 health care in the ordinary course of business or in the  
5 practice of a profession.

6 3. "*Health facility*" means an institutional health facility  
7 ~~as defined in section 135.61~~, a hospice licensed under chapter  
8 135J, a home health agency as defined in section 144D.1, an  
9 assisted living program certified under chapter 231C, a clinic,  
10 a community health center, or the university of Iowa hospitals  
11 and clinics, and includes any corporation, professional  
12 corporation, partnership, limited liability company, limited  
13 liability partnership, or other entity comprised of such health  
14 facilities.

15 4. "*Institutional health facility*" means any of the  
16 following, without regard to whether the facilities referred  
17 to are publicly or privately owned or are organized for profit  
18 or not, or whether the facilities are part of or sponsored by a  
19 health maintenance organization:

- 20 a. A hospital.  
21 b. A health care facility.  
22 c. An organized outpatient health facility.  
23 d. An outpatient surgical facility.  
24 e. A community mental health facility.  
25 f. A birth center.

26 ~~4.~~ 5. "*Open discussion*" means all communications that are  
27 made under section 135P.3, and includes all memoranda, work  
28 products, documents, and other materials that are prepared  
29 for or submitted in the course of or in connection with  
30 communications under section 135P.3.

31 ~~5.~~ 6. "*Patient*" means a person who receives medical care  
32 from a health care provider, or if the person is a minor,  
33 deceased, or incapacitated, the person's legal representative.

34 Sec. 15. REPEAL. Section 135.65, Code 2023, is repealed.

35 EXPLANATION

1           The inclusion of this explanation does not constitute agreement with  
2           the explanation's substance by the members of the general assembly.

3       This bill relates to the health facilities council (HFC) and  
4 the certificate of need (CON) process.

5       The bill amends the definition of "affected person" with  
6 respect to an application for CON to eliminate from inclusion  
7 in the definition each institutional health facility or  
8 health maintenance organization which, prior to receipt of  
9 the application, has formally indicated an intent to furnish  
10 in the future institutional health services similar to the  
11 new institutional health service proposed in the application;  
12 any other person designated as an affected person by rules of  
13 the department; and any payer or third-party payer for health  
14 services.

15       The bill amends the definition of "institutional health  
16 facility" by removing a "community mental health facility"  
17 and a "birth center" from inclusion in the definition,  
18 thereby making these facilities and centers exempt from CON  
19 requirements.

20       The bill amends the definition of "new institutional  
21 health service" or "changed institutional health service"  
22 by striking many of the services included in current Code  
23 and only including: the construction, development, or other  
24 establishment of a new institutional health facility regardless  
25 of ownership; relocation of an institutional health facility;  
26 any capital expenditure, lease, or donation by or on behalf of  
27 an institutional health facility in excess of \$5 million within  
28 a 12-month period, and a permanent change (effective for one  
29 year or more) in the bed capacity of an institutional health  
30 facility. Under the bill, only these services included in the  
31 definition are subject to CON requirements.

32       The bill eliminates terms defined and references to these  
33 terms under the Code chapter that are no longer necessary due  
34 to provisions of the bill including the definitions of "birth  
35 center" and "mobile health service".

1     The bill amends the qualifications for members of the HFC by  
2 retaining the requirement that members of the council be chosen  
3 so that the council as a whole is broadly representative of  
4 various geographical areas of the state, but eliminating the  
5 requirements that no more than three members are affiliated  
6 with the same political party and that each council member be  
7 a person who has demonstrated by prior activities an informed  
8 concern for the planning and delivery of health services.  
9 Code section 69.16 requires that all appointive bodies if  
10 not otherwise provided by law shall be bipartisan in their  
11 composition.

12     The bill amends HFC member appointment provisions to provide  
13 that terms of council members shall be three rather than six  
14 years, and by eliminating the requirements that a member shall  
15 be appointed in each odd-numbered year to succeed each member  
16 whose term expires in that year, that vacancies shall be filled  
17 by the governor for the balance of the unexpired term, and that  
18 each appointment to the council is subject to confirmation by  
19 the senate. The bill also removes the provision that a council  
20 member is ineligible for appointment to a second consecutive  
21 term, unless first appointed to an unexpired term of three  
22 years or less.

23     With regard to the chairperson of the HFC, the bill provides  
24 that the council, rather than the governor, shall designate one  
25 of the council members as chairperson.

26     The bill amends the fee requirements relating to the  
27 application for a CON to provide that instead of a fee  
28 equivalent to three-tenths of 1 percent of the anticipated  
29 cost of the project with a minimum fee of \$600 and a maximum  
30 fee of \$21,000, the fee is \$1,000. The bill retains the  
31 provision that provides that if an application is voluntarily  
32 withdrawn within 30 calendar days after submission, 75 percent  
33 of the application fee shall be refunded, but eliminates  
34 the proportionate refund of any portion of the fee if the  
35 application is voluntarily withdrawn beyond that 30-day period.

1 The bill requires that an application be accompanied by an  
2 economic impact statement that includes information required by  
3 rule to assist in evaluation of the application.

4 Due to the combining of the department of human services  
5 (DHS) and the department of public health (DPH) into the  
6 department of health and human services (HHS), the bill  
7 eliminates the requirement that a copy of the application for  
8 CON be sent to DHS at the time the application is submitted to  
9 DPH.

10 Current law provides that within 15 business days after  
11 receipt of an application for a CON, HHS shall examine the  
12 application and accept or reject it, and that HHS shall  
13 promptly return to the applicant any rejected application, with  
14 an explanation of the reasons for its rejection. The bill adds  
15 a provision that within 30 days after notifying the applicant  
16 of rejection of the application, the applicant may resubmit  
17 a revised application for review and shall not be subject to  
18 payment of another required application fee. Further, if a  
19 subsequent rejection is issued, the applicant shall resubmit  
20 the application in accordance with and shall be subject to the  
21 procedure and requirements for an initial application.

22 Current law provides that upon acceptance of an application  
23 for a CON, HHS shall promptly notify all affected persons  
24 in writing that formal review of the application has been  
25 initiated, and that notification to those affected persons who  
26 are consumers or third-party payers or other payers for health  
27 services may be provided notification by distribution of the  
28 pertinent information to the news media. The bill amends this  
29 provision to eliminate the reference to third-party payers or  
30 other payers as they are no longer included in the definition  
31 of affected persons, and provides that notification to affected  
32 persons who are consumers may be provided by an electronic  
33 distribution method available to HHS.

34 The bill eliminates the letter of intent procedure requiring  
35 that before applying for a CON, the sponsor of a proposed

1 new institutional health service or changed institutional  
2 health service submit to HHS a letter of intent to offer or  
3 develop a service requiring a CON, as soon as possible after  
4 initiation of the applicant's planning process and not less  
5 than 30 days before applying for a CON and before substantial  
6 expenditures to offer or develop the service are made. Under  
7 this provision, the letter must include a brief description  
8 of the proposed new or changed service, its location, and its  
9 estimated cost. If requested by the sponsor, HHS was required  
10 to make a preliminary review of the letter and inform the  
11 sponsor of any factors likely to result in denial of a CON. The  
12 bill also makes a conforming change to eliminate a reference to  
13 the letter of intent procedure.

14 The bill amends the time frames related to the HFC's review  
15 of CON applications. The bill requires that HHS shall complete  
16 its formal review of the application within 30 days, rather  
17 than the current 90 days, after acceptance of the application.  
18 The bill also provides that failure by the council to issue a  
19 written decision on a CON application within the time required  
20 shall constitute approval rather than the current denial of and  
21 final administrative action on the application.

22 The bill provides that any administrative rule adopted for  
23 determining when it is not feasible to complete formal review  
24 of an application for a CON within the time limits specified  
25 for the HFC's final decision shall not permit a deferral of  
26 more than 30 days, rather than the current 60 days, beyond  
27 the time specified for a decision on the final decision,  
28 unless both the applicant and the department agree to a longer  
29 deferment.